

REMARKS

Claims 1-20 are pending in this application, all of which stand finally rejected as a result of the May 1, 2006 Office Action. Claims 1-20 stand rejected under 35 U.S.C. § 101, and also under 35 U.S.C. § 103(a) as being obvious over Gray in view of Bowman-Amuah. Additionally, the drawings have been objected to.

Applicants respectfully disagree with the ground for rejection and traverse.

The Section 101 Rejections

Claims 1 and 11 have been amended in the manner proposed by the Examiner. This amendment overcomes the section 101 rejection of claims 1 and 11, and their dependent claims 2-10 and 12-16.

Claims 17 and 20 have been amended to more particularly point out the invention. Applicants disagree with the Examiner's characterization of the prior version of these claims as lacking any practical application. Thus, the amendment is not made to overcome any ground for rejection, or for any reason related to patentability, since the section 101 rejection of these claims is incorrect. However, applicant notes that the amended versions of claims 17 and 20 both now mention that the performance of a system is tested by measuring the behavior of that system under a set of test data. Such performance testing is clearly of practical significance, and thus the additional mention of this aspect in the claims renders moot the section 101 rejection of claims 17 and 20 (and dependent claims 18 and 19).

Applicants thus request that the section 101 rejection of claims 1-20 be reconsidered and withdrawn.

The Section 103 Rejections

The Examiner has rejected claims 1-20 – including all of the independent claims (1, 11, 17, and 20) as being unpatentable over Gray in view of Bowman-Amuah. While none of the claims are identical or co-extensive in substance, language, or scope, there are certain related features related to the use of a seed.¹ In particular, the independent claims contemplate

¹ Applicants have argued the related features of the independent claims solely for the Examiner's convenience. The fact that related features have been, in some ways, treated together should not in any way be understood to imply that the claims are to be construed similarly, or that the claims either stand or fall together. The language

a set of generated data made up of elements that are ordered in some sequence, and where the seed determines or identifies a particular position in that sequence. In particular:

- Claim 1 recites: “synthetic data having a sequence ... and a seed ... acting as a second input to the deterministic data generation module, the seed indicating a position in the sequence of the synthetic data”

- Claim 11 recites: “a [generated] data set having synthesized data wherein within the data set each data element has a sequence number, ... the data set [being] organized such that the data is positioned from lowest sequence number to highest sequence number in a sequential fashion ... providing a seed as input to the deterministic data generation module, the seed acting to position the deterministic data generation module to generate data having a predefined sequence number”

- Claim 17 recites: “a [generated] deterministic set of synthesized data ... wherein each data element of the data set has a sequential number ... and a means to seed the generating function to generate data having a particular sequence number that is chosen based on the seed”

- Claim 20 recites: “generate a data set corresponding to sequential numbers, the numbers associated with a data element of the data set ... setting a seed to act as input for the deterministic data generation function such that the input drives the deterministic data generation function to generate data corresponding to a particular sequential number.”

As to these various features related to the use of “seeds” and their relation to sequence, the Examiner has relied on Gray –in particular programs nos. 8, 13, and 18 shown in Gray. Although the previous office action did not explain how the references were asserted to teach a seed that indicates a sequence in the generated data (or a position there), the current office action clarifies this point in paragraph 7: Program 8 contains a programmer’s comment to a line of code that states “seed = next in series”. From this comment, the Examiner infers that the seed indicates a sequence, or position in sequence, of generated data. Applicants note that the actual arithmetic expression that appears in the code next to this comment (i.e., “seed = (G * seed) % P”) simply computes the next value of the variable “seed” based on the current value of “seed”.

of the claims speaks for itself, and is not subject to characterization as to whether the claims should, or should not, be construed alike.

The error in the Examiner's reasoning is that the claims do not recite that the seeds themselves come in some sequence. (The claims are silent on that point.) Rather, the claims define that a particular seed indicates a particular item or sequence number in the generated data. Grey shows a series of seeds that (arguably) appear in some order; however, what the claims define is one particular seed that is used to determine a position or sequence number of an element of some other set of data. As a concrete (but non-limiting) example, if one were to say that "{ 1, 4, 2, 3, ... } is a set of seeds," one would be within the meaning of Gray; but if one were to say that "the chosen seed *is* 4, and this implies that we choose the 4th position in the series of generated data that constitutes { 1, 6, 500, 32, 207, 132, 3, ... }", then one would be (one example) within the meaning of the present independent claims.

Applicants believe that the above example illustrates a distinction between the present independent claims and Grey, and applicants request that the Examiner consider this example and re-evaluate whether Grey actually applies to the claim features against which it has been cited.

Although the claims have been rejected over Gray in view of Bowman-Amuah, applicants note that the Examiner appears to rely on Grey for the features discussed above. Thus, applicants' points above are focused on the distinction between certain claim features and Grey, although applicants note that the above-referenced features are not taught or suggested either in Bowman-Amuah, or in any reasonably conceivable combination of Grey with Bowman-Amuah. At this point, it is worth noting the exact nature of the Examiner's reliance on the references.

As to the above-quoted features of claims 1 and 11, the Examiner cited both Grey and Bowman-Amuah (col. 101, l. 60 through col. 102, l. 3). Although the Examiner cites nine lines of Bowman-Amuah in reference to the above-quoted features of claims 1 and 11, it should be noted that none of the cited portion of Bowman-Amuah has anything to do with a seed, or the use of a seed to identify a sequence or position. (As noted above, Grey mentions a seed but does not teach the use of a seed to supply a sequence or position; any such use of the seed in the obviousness rejection, therefore, would either have to come from Bowman-Amuah, or else the Examiner would have to explain how the references motivate one to create a feature that is not actually taught in either reference – see MPEP 2143.03, which states that "To establish prima facie obviousness of a claimed invention, all the claim

limitations must be taught or suggested by the prior art.”) The cited portion of Bowman-Amuah reads as follows:

Test Data Management tools allow developers to create and maintain input data and expected results associated with a test plan. They include test data and archiving tools that assist in switching between cycles and repeating a cycle based on the original data created for that cycle.

Test Data Management functionality may be provided by the following tools:

Test data generation tools--usually generate test data by permutation of values of fields, either randomly or systematically.

As can be seen, Bowman-Amuah, in the cited portion, mentions the generation of test data, but does not explain how a seed (or anything else) could be used to identify a position or sequence in the test data. As noted above, Grey does not teach the use of a seed to identify a position or sequence of data, and – as is plain from the above-quoted material – the cited portion of Bowman-Amuah does not remedy this deficiency in Grey.

The references cited arguably show data (Bowman-Amuah) and a seed (Grey). However, claim 1 and 11 do not merely recite data and a seed; they each recite that the seed is used in a particular way with respect to the data. The combination of Bowman-Amuah with Grey does not meet the standard for a finding that the art renders this feature obvious.

As to independent claims 17 and 20, Bowman-Amuah is not relied on for any of the seed-related features, but is relied on solely for its alleged teaching of “repeatable.” Since the Examiner has relied entirely upon Grey as teaching the seed-related features, it is sufficient to note that, for the reasons stated above, Grey does not teach or suggest that a seed is used to generate data having or corresponding to a particular sequence number or sequential number. Even if one were to argue that Grey teaches the use of a seed to generate data, this fact would not be sufficient to conclude that Grey teaches or suggests claims 17 or 20 because using a seed to generate data does not mean that the seed is used to generate data having a particular sequence or sequential number; there is no suggestion in Grey that the data is numbered in any particular sequence, or that such sequence is related to the seed. And, finally, the combination of Bowman-Amuah with Grey does not suggest the use of a seed in the manner described above (although, as noted, the Examiner has not asserted that such combination

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teaches the use of a seed, since, with regard to claims 17 and 20, Bowman-Amuah has been relied on only for its alleged teaching or suggestion of "repeatable").

Applicants request that the Examiner reconsider the rejection of claims 1-20, with particular focus on the use of seeds in independent claims 1, 11, 17, and 20. Applicants respectfully submit that, in view of these features, the claims are allowable, and that the final rejection should be reconsidered and withdrawn.

Drawing Objection

Applicants have submitted an amended Figure 2, which addresses the objection to the drawings.


No New Matter

The amendments do not introduce new matter. The amendments to claims 1 and 11 are supported at least by paragraph 0022. The amendment to claims 17 and 20 are supported at least by paragraphs 0046-0050. The amendment to Figure 2 is supported at least by paragraph 0028.

Conclusion

In view of the foregoing amendments and remarks, applicants request that the Examiner reconsider the grounds for objection and rejection, and instead issue a notice of allowance. Applicants respectfully submit that this case is in condition for allowance.

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Peter M. Ullman
Registration No. 43,963

Woodcock Washburn LLP
One Liberty Place - 46th Floor
Philadelphia PA 19103
Telephone: (215) 568-3100
Facsimile: (215) 568-3439